



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

February 2005

Corning Cable Systems LLC  
P.O. Box 489  
Hickory, NC 28603

FEB - 7 2005

In re Application of:  
Chanh C. Vo  
Serial No.: 09/840,482  
Filed: April 23, 2001  
Attorney Docket No.: HE0186

DECISION ON PETITION TO  
WITHDRAW THE HOLDING  
OF ABANDONMENT

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181 filed via facsimile transmission on November 1, 2002. There is no fee for this petition.

The petition is **DENIED**.

This application became abandoned for failure to timely file a proper reply to the final Office action mailed on February 26, 2002. A Notice of Abandonment was mailed on October 23, 2002.

Petitioner asserts that a response to the Office action of February 26, 2002 was timely filed via facsimile transmission on May 7, 2002. The evidence provided by the petitioner includes a statement which attests upon a personal knowledge basis to the previous facsimile transmission as well as a copy of the sending unit's report confirming transmission. The copy of the response contains the required certificate of facsimile transmission (dated May 7, 2002) under 37 C.F.R. § 1.8 (a)(1)(ii). The evidence is sufficient under 37 C.F.R. § 1.8 (b) to establish that the response was timely filed.

As stated in MPEP section 714.13, a reply to a final rejection under 37 CFR 1.113 is limited to: (A) an amendment complying with 37 CFR 1.116; (B) a Notice of Appeal (and appeal fee); or (C) a request for continued examination (RCE) filed under 37 CFR 1.114 with a submission and the fee set forth in 37 CFR 1.17(e).

In the instant case, applicant filed an amendment after final pursuant to 37 C.F.R. § 1.116. However, the entry of this amendment was not a matter of right. Moreover, the mere filing of an amendment does not act in any way to extend the maximum SIX MONTH statutory period set forth in 35 USC 133. Likewise, the mailing or non-mailing of an Advisory action does act in any way to extend this statutory period.

37 CFR 1.116 provides in part: "(t)he admission of, or refusal to admit, any amendment after

final rejection ... will not operate to ... save the application from abandonment under §1.135." MPEP section 711.03(c) provides in part: "nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment."

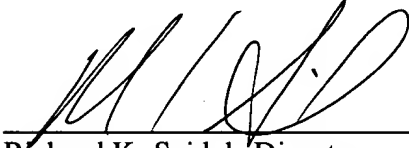
The six month maximum statutory period to file a proper reply to the final Office action expired as of midnight August 26, 2002. As stated above, the evidence provided by petitioner was sufficient to establish that a reply to the final Office action was timely filed via facsimile transmission on May 7, 2002. The only questions are whether the reply would have been entered and if so, whether the reply would have put the application in condition for allowance.

For the answers to those questions, the application file was sent to the examiner to consider the response (i.e., amendment) of May 17, 2002. The enclosed Advisory action prepared by the examiner indicates that the amendment would not have been entered because it raises new issues that would require further consideration and/or search. A review of examiner's decision not to enter the amendment indicates the decision was a reasonable one.

Accordingly, the petition is denied and the application remains abandoned. While it is unfortunate that no Advisory action was previously mailed and that applicant was not previously put on notice that the proposed amendment of May 17, 2002 would not be entered, as noted above, these facts would neither save the application from abandonment nor warrant withdrawal of the holding of abandonment.

Petitioner may wish to consider filing a petition under 37 C.F.R. § 1.137(b).

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.



---

Richard K. Seidel, Director  
Technology Center 2800  
Semiconductors, Electrical and Optical  
Systems and Components